



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL-4M-MT, CNR, OPR-DR, MNR-DR, FFL

Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”).

The Tenant applied for:

1. An Order cancelling two notices to end tenancy - Section 46 and 49; and
2. An Order for more time to make the application to cancel one of the notices to end tenancy - Section 66.

The Landlord applied for:

1. An Order of Possession - Section 55;
2. An Order for unpaid rent or utilities - Section 67; and
3. An Order to recover the filing fee for this application - Section 72.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions. The Parties confirm that they are not using recording devices for the hearing.

Preliminary Matter

The Tenant states that they did not receive any evidence from the Landlord. The Landlord states that all evidence was given to the Tenant. The Tenant confirms that it has copies of the notices to end tenancy that are being disputed. As the dispute can be

resolved with oral evidence and the copies of the Notice, I consider that whether or not the Tenant has additional evidence from the Landlord is not an issue.

Issue(s) to be Decided

Is the Tenant entitled to a cancellation of the notices to end tenancy?

Is the Landlord entitled to an order of possession?

Is the Landlord entitled to unpaid rent?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The following are agreed facts: The tenancy started on November 1, 2020. At the outset of the tenancy the Landlord collected \$1,200.00 as a security deposit and \$1,200.00 as a pet deposit. Rent of \$2,400.00 is payable on the first day of each month. The Landlord gave the Tenant a 4 month notice to end tenancy for landlord's use dated April 26, 2022 (the "Notice"). The Notice sets out that the unit will be demolished and that permits have been obtained.

The Landlord states that the Tenant was served in person with the Notice on April 26, 2022. The Tenant states that the Notice was in the mail slot. The Tenant has no evidence to dispute that the Landlord has a good faith intention to demolish the unit.

The Landlord states that the Tenant has paid no rent since and including April 2022 to current. The Landlord does not dispute that the Tenant is entitled to the equivalent of one month's rent for having received the Notice. The Landlord claims unpaid rent.

The Tenant does not dispute that rents for July, August and September 2022 have not been paid. The Tenant states that the Landlord was paid in cash and in person at the unit for April, May and June 2022 on the first day of each of those months. The Parties do not dispute that on May 5, 2022 the Landlord posted on the Tenant's door a 10-day notice to end tenancy dated May 5, 2022 (the "Rent Notice"). The Parties do not

dispute that the Rent Notice sets out unpaid rents for April and May 2022 in the amount of \$4,800.00. The Landlord states that texts between the Parties during this time support that the Landlord was not paid the rent.

Analysis

Section 49(6)(a) of the Act provides that a landlord may end a tenancy in respect of a rental unit if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to demolish the rental unit. Section 55(1) of the Act provides that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

(a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

Given the Tenant's evidence that they have nothing to dispute that the Landlord does not intend to demolish the unit I find on a balance of probabilities that the Notice is valid for its reason. The Tenant's claim to cancel the Notice is therefore dismissed. As the Notice complies in form and content I find that the Landlord is entitled to an order of possession of the unit. As the Landlord has been successful with this claim it is not necessary to consider the validity of the Rent Notice and I dismiss the Tenant's claim to cancel the Rent Notice.

Section 26 of the Act provides that a tenant must pay the rent when and as provided under the tenancy agreement whether or not the landlord complies with this Act, the regulations or the tenancy agreement. Based on the undisputed evidence of unpaid rent for July, August and September 2022 I find that the Landlord is entitled to **\$7,200.00**. Noting that the Tenant did not set out any particulars in its application disputing the Rent Notice indicating that rents were paid for April and May 2022 I tend to prefer the Landlord's evidence that these rents were not paid and find on a balance of

probabilities that the Landlord has substantiated an entitlement to unpaid rent for April and May 2022 in the amount of **\$4,800.00**. The total unpaid rent for these months is **\$12,000.00**. As the Landlord provided no evidence to support that June 2022 rent was not paid and given the Tenant's evidence that rent for this month was paid, I find on a balance of probabilities that the Landlord has not substantiated their claim for unpaid rent for June 2022 and I dismiss this claim.

As the Landlord has not disputed that the Tenant is owed **\$2,400.00** as the equivalent of one month's rent for having received the Notice, I deduct this amount from the Landlord's entitlement. I also deduct the combined security and pet deposit plus zero interest of **\$2,400.00** from the Landlord's entitlement. Deducting the total amount of **\$4,800.00** from the Landlord's entitlement of **\$12,000.00** leaves **\$7,200.00** owed to the Landlord. As the Landlord's claim has had merit, I find that the Landlord is also entitled to recovery of the **\$100.00** filing fee for a final entitlement of **\$7,300.00**.

Conclusion

I grant an Order of Possession to the Landlord effective two days after service on the Tenant. The Tenant must be served with this **Order of Possession**. Should the Tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

I Order the Landlord to retain the security deposit plus interest of \$2,400.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the remaining amount of **\$7,300.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: September 20, 2022

Residential Tenancy Branch